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Of Counsel:
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

| | | |
|---------------------------|---|------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | Case No. |
| Plaintiff, |) | |
| |) | |
| v. |) | COMPLAINT |
| |) | |
| DIANE A. MASLOWSKI |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

Plaintiff, the United States of America brings this action to collect from the defendant outstanding civil penalties (31 U.S.C. § 5321(a)(5)), commonly known as FBAR penalties, which were assessed against Diane A. Maslowski, for her failure to timely report her financial interest in, and/or her signatory or other authority over, foreign bank accounts for the 2006, 2007 and 2008 calendar years, as required by 31 U.S.C. § 5314 and its implementing regulations, having a total balance due to the United States

1 of America of \$12,410.82 as of February 1, 2018 plus all associated penalties and
2 interest. In support of this action, the United States alleges as follows:

3
4 **Jurisdiction and Venue**

- 5 1. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1345, and 1355(a).
6 2. At all times relevant to the matters at issue, Defendant Diane A. Maslowski
7 (“Maslowski”) was a United States citizen and remains a United States
8 citizen.
9 3. Maslowski is currently a resident of Scottsdale, Arizona.
10 4. Venue is proper under 28 U.S.C. § 1391.
11 5. The United States of America brings this action pursuant to the
12 authorization of the Secretary of the Treasury (*see* 31 U.S.C.
13 § 3711(g)(4)(C)) and at the direction of the Attorney General of the United
14 States.
15 6. This civil action to collect the FBAR Penalty, and the associated penalties
16 and interest, is timely under 31 U.S.C. § 5321(b)(2), because it is filed
17 within two years of the date on which the 2006 FBAR Penalty, 2007 FBAR
18 Penalty, and the 2008 FBAR Penalty were assessed, February 29, 2016.
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21 **Background Regarding Diane A. Maslowski’s Interests in Foreign Accounts**
22

- 23 7. Maslowski was born Diane A. Van Hyfte in the state of Illinois in 1966 and
24 married Edmund J. Maslowski (“Edmund”) in 1998.

- 1 8. Maslowski divorced Edmund in 2010.
- 2 9. On or about September 1, 1994, Maslowski's former husband, Edmund,
- 3 opened a "numbered account" with an account number ending in 0563 by
- 4 signing account opening documents at the Hong Kong office of the Swiss
- 5 Bank Corporation located in Zurich, Switzerland.
- 6 10. Amongst the account opening documents signed by Edmund on or about
- 7 September 1, 1994, were: an account application including instructions to
- 8 Swiss Bank Corporation to retain at the bank all correspondence related to
- 9 the account number ending in 0563; a form identifying Edmund as the
- 10 beneficial owner of the account ending in 0563; a Charge/Declaration of
- 11 Pledge form acknowledging that all disputes related to the account ending
- 12 in 0563 would be governed by and decided under Swiss law; and, an
- 13 agreement regarding Margins for Forward/Futures Transactions indicating
- 14 that the venue for performance of such agreement, and any court
- 15 proceedings under the agreement, would be Zurich, Switzerland.
- 16 11. During the years 1997-1998 Swiss Bank Corporation and Union Bank of
- 17 Switzerland merged to become UBS in Zurich, Switzerland and the account
- 18 ending in 0563 ("the UBS account") continued to be maintained and
- 19 serviced with the same account number by the resulting UBS entity.
- 20 12. On or about September 5, 2000, during the course of her marriage to
- 21 Edmund, Maslowski signed a UBS General Power of Attorney form, which
- 22 was also signed by her former husband, which gave her unlimited power of
- 23
- 24

1 attorney over the UBS account including, but not limited to full signatory
2 authority over the account.

3 13. Maslowski has never filed an FBAR report disclosing her ownership
4 interest in, nor signatory (or any other) authority over, the UBS account.

5 14. Throughout calendar years 2006, 2007, and 2008 Maslowski was a United
6 States citizen, resided within the United States, and was otherwise subject
7 to the jurisdiction of the United States within the meaning of 31 C.F.R.
8 § 103.24¹.

9 15. Throughout calendar years 2006, 2007, and 2008 the UBS account was a
10 bank account in a foreign country.

11 16. From September of 2000 and throughout calendar year 2008, Maslowski
12 had signatory authority over, and ownership interests in, the UBS account
13 within the meaning of 31 C.F.R. § 103.24.

14 17. From September of 2000 throughout calendar year 2008, Maslowski was
15 aware of her ownership interest and signatory authority over the UBS
16 account.
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21 ¹ Please note that the Regulations implementing the FBAR statute, 31 USC § 5314, were
22 renumbered effective March 28, 2011 with respect to all reports due for foreign financial
23 accounts maintained in calendar year 2010 and later. The updated regulations may be
24 found at 31 CFR §§ 1010.300 et. seq. Prior to renumbering, the regulations effective for
the years at issue herein were found at 31 C.F.R. § 103.24, 31 C.F.R. § 103.27, and 31
C.F.R. § 103.32.

Claim for Relief: Judgment for Civil Penalty (31 U.S.C. § 5321(a)(5))

Liability for the Civil Penalty for 2006

18. The United States incorporates the allegations in paragraphs 1 through 17 as if fully set forth herein.
19. During calendar year 2006, the aggregate maximum account balance in the UBS account exceeded \$900,000.00.
20. On all U.S. federal income tax returns filed by Maslowski through 2006, she failed to report any income from the UBS account and on Schedule B of such returns reported that she had no interest in, nor any authority over, any foreign financial accounts.
21. Maslowski failed to timely file an FBAR for the year 2006 disclosing her ownership interests and signature authority over the UBS account despite being required to do so by 31 U.S.C. § 5314 and 31 C.F.R. § 103.27(c).

Liability for the Civil Penalty for 2007

22. The United States incorporates the allegations in paragraphs 1 through 21 as if fully set forth herein.
23. During calendar year 2007, the aggregate maximum account balance in the UBS account exceeded \$400,000.00.
24. On the U.S. federal income tax return filed by Maslowski for 2007, she failed to report any income from the UBS account and on Schedule B of

1 such return reported that she had no interest in, nor any authority over, any
2 foreign financial accounts.

- 3 25. Maslowski failed to timely file an FBAR for the year 2007 disclosing her
4 ownership interest and signature authority over the UBS account despite
5 being required to do so by 31 U.S.C. § 5314 and 31 C.F.R. § 103.27(c).
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8 ***Liability for the Civil Penalty for 2008***

- 9 26. The United States incorporates the allegations in paragraphs 1 through 25
10 as if fully set forth herein.

- 11 27. During calendar year 2008, the aggregate maximum account balance in the
12 UBS account exceeded \$250,000.00.

- 13 28. On the U.S. federal income tax return filed by Maslowski for 2008, she
14 failed to report any income from the UBS account and on Schedule B of
15 such return reported that she had no interest in, nor any authority over, any
16 foreign financial accounts.

- 17 29. Maslowski failed to timely file an FBAR for the year 2008 disclosing her
18 ownership interest and signature authority over the UBS account despite
19 being required to do so by 31 U.S.C. § 5314 and 31 C.F.R. § 103.27(c).
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Assessment and Collection of the Civil Penalties for 2006, 2007, and 2008

30. On April 18, 2013, January 15, 2014, January 19, 2015, July 6, 2015, and November 19, 2015 Maslowski consented, in writing, to extensions of the time within which to assess penalties under 31 U.S.C. § 5321.

31. On February 29, 2016, in accordance with 31 U.S.C. § 5321(a)(5)(C)(i), a delegate of the Secretary of the Treasury timely assessed a civil penalty against Maslowski, in the amount of \$10,000.00 for each of the years 2006, 2007, and 2008 due to the failure of Maslowski to timely and properly disclose the UBS account.

32. A delegate of the Secretary of the Treasury sent Maslowski notice of the assessment of the 2006, 2007 and 2008 FBAR Penalties and demand for payment.

Additional Amounts Due and Owing to the United States

33. The FBAR penalties described in paragraph 31 above were assessed pursuant to 31 U.S.C. § 5321(a)(5)(b)(i), which imposes a penalty not to exceed \$10,000 for each violation of the FBAR filings requirements that is not due to a willful violation of 31 U.S.C. § 5321.

34. Maslowski has not fully paid the outstanding FBAR penalties described in paragraph 31.

35. Pursuant to 31 U.S.C. § 3717(a)(1), the United States is entitled to recover prejudgment interest accrued on Maslowski's unpaid penalties. In addition,

1 pursuant to 31 U.S.C. § 3717(e)(2), the United States is entitled to recover a
2 penalty for Maslowski's failure to pay a lawful debt owed to the United
3 States. Furthermore, pursuant to 31 U.S.C. § 3717(e)(1), the United States
4 is entitled to recover charges assessed against Maslowski to cover
5 collection-related costs of processing and handling her outstanding FBAR
6 liabilities.

7
8 36. As of February 1, 2018, the outstanding balance owed by Maslowski is
9 \$12,410.82. This amount includes assessed but unpaid FBAR penalties, as
10 well as accruals pursuant to 31 U.S.C. § 3717 (i.e. prejudgment interest,
11 failure to pay penalties, and collection-related costs).

12 37. In addition to the \$12,410.82, the United States is entitled to recover the
13 additional penalty, interest, and any collection-related costs that accrue on
14 that amount.

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16 WHEREFORE, the plaintiff United States of America demands that this Court:

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18 (a) Enter judgment in favor of the plaintiff United States of America and against
19 the defendant, for the FBAR penalties assessed against Diane A. Maslowski with
20 regard to the 2006, 2007, and 2008 reporting periods, in the total amount of
21 \$12,410.82 as of February 1, 2018, as well as associated penalties and interest,
22 plus statutory accruals until fully paid; and,
23
24

1 (b) Award the United States of America its costs, and such further relief as the
2 Court deems just and proper.

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4 Dated: February 7, 2018

5 Respectfully submitted,

6 RICHARD E. ZUCKERMAN
7 Principal Deputy Assistant Attorney
General

8 /s/ Paul T. Butler
9 PAUL T. BUTLER (MD Bar.
10 9406230037)
11 Trial Attorney, Tax Division
12 U.S. Department of Justice
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15 Of Counsel:
16 ELIZABETH A. STRANGE
First Assistant United States Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): United States of America

Defendant(s): Diane A. Maslowski

County of Residence: Outside the State of Arizona

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

Paul Timothy Butler

U.S. Department of Justice, Tax Division

P.O. Box 683

Washington, DC 20044

202-514-1170

II. Basis of Jurisdiction:

1. U.S. Government Plaintiff

III. Citizenship of Principal

Parties (Diversity Cases Only)

Plaintiff:- N/A

Defendant:- N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

690 Other

VI. Cause of Action:

31 USC § 5321(a)(5) Penalties for Failure to Report Foreign Accounts

VII. Requested in Complaint

Class Action: **No**

Dollar Demand: **12,410.82**

Jury Demand: **No**

VIII. This case is not related to another case.

Signature: /s/ Paul T. Butler

Date: 2/7/2018

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014